STATE OF RHODE ISLAND
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
OFFICE OF THE COMMISSIONER

In re the November 29, 2021 Request for a Declaratory Order Pursuant to R.I. Gen. Laws § 42-35-8, or for a hearing pursuant to R.I. Gen. Laws § 16-39-1 by the Scituate School Department to Appeal the Findings and Conclusions of the Office of Student, Community, and Academic Support

D.O. 21-002K

1. The Request for the Declaratory Order

On November 29, 2021, counsel for the Scituate School Department ("Scituate") attempted to appeal certain findings and final conclusions made by the Department of Elementary and Secondary Education's ("RIDE") Office of Student, Community, and Academic Support ("OSCAS"), which found on November 15, 2021 that Scituate had failed to comply with the requirements of an individualized education program ("IEP") that had been established for a minor student ("T.W."), and which ordered that Scituate perform certain corrective action. A copy of the November 15, 2021 Findings and Conclusions Letter (the "Findings and Conclusions") was attached as Exhibit B to the November 29 request.

2. Declaratory Orders and Appeals

R.I. Gen. Laws § 42-35-8 provides that "[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner" and "[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration." § 42-35-8(a), (c); *see generally* Regulations Governing Declaratory Order Petitions (the "D.O. Regs."), 200-RICR-30-15-2, *et. seq*.

In addition, R.I. Gen. Laws § 42-35-8(d) provides that "[i]f an agency declines to issue a declaratory order requested under subsection (a), it shall notify, promptly, the petitioner of its decision. The decision must be in a record and must include a brief statement of the reasons for declining."

3. Scituate's Argument

Counsel for Scituate properly noted that RIDE has the authority "to investigate, make findings of fact, and order corrective action relating to special education state complaints" pursuant to 34 C.F.R. §§ 300.151-153 and the Rhode Island Regulations Governing the

Education of Children with Disabilities (the "Disability Regs."), 200-RICR-20-30-6.5.6. *See* the November 29 request, ¶ 3. However, as will be discussed, counsel provided no legal support for their claim that their request for a declaratory order had been "properly made" under R.I. Gen. Laws § 42-35-8 and/or the D.O. Regs. – or, alternatively, pursuant to R.I. Gen. Laws § 16-39-1.

4. Decision

The Individuals with Disabilities Education Act (the "IDEA"), 20 U.S.C. § 1400*, et seq.*, does not expressly reference any "proceeding" or "administrative proceeding," but it does require states to "establish and maintain procedures . . . to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education [("FAPE")] by such agencies." 20 U.S.C. § 1415(a). In addition to offering an impartial due process hearing and mediation, the state is required under the IDEA Part B Regulations, 34 C.F.R. Part 300, *et seq.*, to adopt procedures for the resolution of state complaints alleging violations of the IDEA, such as the complaint in this case. *See* 34 C.F.R. §§ 300.151-153, 300.506, 300.507-515. However, the applicable law and regulations are silent as to whether a decision on such a state complaint may be appealed or otherwise reconsidered and thus neither prohibit nor require the establishment of procedures to permit either party to request reconsideration of a state complaint decision.

In fact, the IDEA Part B Regulations repeatedly refer to the state educational agency's ("SEA") written decision on a state complaint as "final" so as to create a presumption of finality. *See* 34 C.F.R § 300.152(a)(5)(ii) ("The reasons for the SEA's **final decision**.") (emphasis added); 34 C.F.R § 300.152(b) ("The SEA's procedures described in paragraph (a) of this section also must – . . . (2) Include procedures for effective implementation of the SEA's **final decision**[.]") (emphasis added). Yet, this presumption of finality is subject to the SEA's discretion, and an SEA may choose to provide for internal review of an agency decision. *See* 34 C.F.R. § 300.151(a)(1)(ii); *see also Independent School District No. 709 v. Bonney*, 705 N.W.2d 209, 220 (Minn. Ct. App. 2005) (holding that "[a] state 'may choose to establish procedures for reconsideration of complaint decisions'" but is not required to do so) (quoting *Memorandum to Chief State School Officers*, 34 IDELR 264 (OSEP, July 17, 2000), superseded by *Memorandum to Chief State School Officers*, 61 IDELR 232 (OSEP, July 23, 2013)).

However, procedures for reconsideration of a state complaint decision would necessarily have to comply with the IDEA Part B Regulations "Adoption of State complaint procedures," 34 C.F.R. § 300.151, and "Minimum State complaint procedures," 34 C.F.R. § 152, in order to be effective. Thus, such reconsideration procedures must at least be in writing and require the SEA to issue a final written decision on the state complaint within sixty (60) days after the complaint is originally filed, unless the SEA extends the time limit due to exceptional circumstances in accordance with 34 C.F.R. § 300.152(b)(1). The Disability Regs. do not provide for such review procedures. *See* 200-RICR- 20-30-6.5.6.

Moreover, while R.I. Gen. Laws § 16-39-1 provides a general appeal process for "any matter of dispute . . . arising under any law relating to schools or education," this review process fails to comply with the mandatory adoption and minimum state complaint procedures under the IDEA Part B Regulations, as discussed *supra*, and is therefore inapplicable here. Similarly, the declaratory order statute was not intended to facilitate an end-run around the state's policy

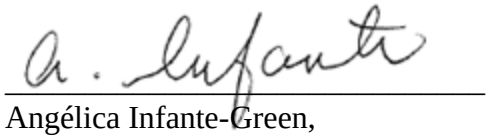
decision to not allow for appeals from the decisions of OSCAS made pursuant to the IDEA, nor can it properly do so under the IDEA Part B Regulations, as discussed.

All that being said, if an issue arising under a state complaint remains in dispute following the issuance of OSCAS' final written decision, the Disability Regs. permit the parties to use mediation in accordance with 34 C.F.R. § 300.506 or to file a due process complaint and request an impartial due process hearing in accordance with 34 C.F.R. §§ 300-507-508. *See* 200-RICR-20-30-6.8.1(G), (H)-(I).

For all the above reasons, and pursuant to R.I. Gen. Laws § 42-35-8(d), Scituate's request for a declaratory order under R.I. Gen. Laws § 42-35-8, or alternatively for a hearing pursuant to R.I. Gen. Laws § 16-39-1, is hereby denied.

Please be advised R.I. Gen. Laws § 42-35-8(d) provides that this decision "is subject to judicial review for abuse of discretion."

Entered as a final agency Order this 8th day of December, 2021.



Angélica Infante-Green,
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of this Declaratory Order to be posted on RIDE's website and to be served by email on this 8th day of December, 2021 upon Sean J. Clough, Esq. (at sclough@brcsm.com); Jon M. Anderson, Esq. (at janderson@brcsm.com); and Brenda Walsh (at walshsmiles@yahoo.com).